

TOM TRAIL
DISTRICT 5
LATAH COUNTY

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COMMITTEES

EDUCATION

AGRICULTURAL AFFAIRS

COMMERCE & HUMAN RESOURCES

House of Representatives State of Idaho

12-19-02

To: Roger Madsen

From: Rep. Tom Trail

Fax 334-6430

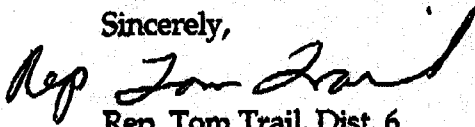
Subj: Rep. Andersen's and My Tax Bill

Mike Nugent delivered a new and revised copy of the bill to your office yesterday; however, I wanted to include several other attachments including a letter, press release and supplemental material.

We appreciate your distributing this to the Task Force.

Rep. Andersen and I would be pleased to make a presentation to the Revenue Sub Committee on January 7th.

Sincerely,


Rep. Tom Trail, Dist. 6

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COMMITTEES ²

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COMMERCE & HUMAN RESOURCES

House of Representatives State of Idaho

December 12, 2002

**Task
Force
Members**

Re: Idaho Economic Recovery and Tax Reform Act of 2003

Dear

Task Force Members

Enclosed is an information and courtesy copy of the Bill and Statement of Purpose we have pre-filed to provide for a fiscally responsible fix to the budget deficit which is threatening to destroy the Idaho institutions essential to our economy and our quality of life.

We commend this Bill to your consideration, its primary directions being three:

- (1) **REDUCE** the Sales Tax rate from 5% to 4%;
- (2) When enacted in 1965, the Sales Tax had 17 exemptions – it now has more than 72. This legislation removes a number of the Sales Tax and Income Tax exemptions added in recent years resulting in a net **INCREASE** in revenues of approximately \$131.2 Million;

(If the \$131.2 Million sounds large to you, please be reminded that Idaho has 1.3 Million citizens, and therefore it is only \$100 per citizen per year. Actually, it is less than that because a large percentage of sales and income tax is paid by tourists, stockholders, and other out-of-state interests)

- (3) We include a provision which requires quarterly payments of income tax, with the first two quarters of Calendar Year 2003 being payable on June 15th. (Currently corporations and wage earners pay as they go and this extends that provision to professionals and others who are required to make quarterly payments under the Federal Tax Law.)

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December 13, 2002

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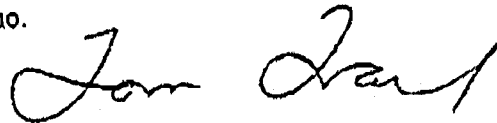
This provision for quarterly payments will bring in approximately **\$80 Million** in FY 2002-2003, thus voiding the need for further holdbacks, making it possible to restore some of the holdbacks, and making the balance available for balancing the budget for FY 2003-04.

The document enclosed behind the Bill entitled "Idaho Tax Expenditures and Exemptions" lists (in column 1) all of the exemptions and items not taxed in the Income Tax and in the Sales Tax. Column 2 lists all exemptions which could be considered for removal. Our nominees for removal from exempt status are those in the far right -hand column.

We would appreciate comments and suggestions for improving the Bill, and we will consider filing a separate bill with variations during the first two weeks of the session, on which bill we would be happy to have additional sponsors from both parties.

We are of the belief that Idaho's institutions are in severe crisis, and that we cannot simply "grow ourselves" out of this problem – the national and state economy is a contributing factor, but the major source of our deficit is the fact that we have been gradually eroding our tax base through addition of exemptions over the years and we have failed to revise the Sales Tax structure in conformance with the fact that since 1965 Idaho has shifted from an economy which was primarily RESOURCE based to an economy which is primarily SERVICE based.

Yours in the service of the people of Idaho.



Representative Tom Trail



Representative Allen Andersen

(4)

Press Release

**IDAHO ECONOMIC RECOVERY AND TAX REFORM
ACT OF 2003**

To: All Media Newspersons and Editorial Staff

From: Rep. Tom Trail and Rep. Allen Andersen

Subj: Accountability in Public Debate and Media response during process

Attached for your information is a three-page listing of all the present exemptions in the Sales Tax law and in the Income Tax law. Column 3 lists those our Bill eliminates to enable Idaho to reduce the Sales Tax rate to 4% while increasing revenues by \$131.2 Million.

The legislation and supporting documents were mailed Friday to every legislator. There will be many who will react negatively to this plan to address the \$160,000,000 plus deficit.

We make the following two requests to the Media:

(1) When a member of the Legislative or Executive branches of government; or a lobbyist or taxpayer or business leader reacts negatively, insist they respond to questions about what solution they propose or support. If their answer is "cut expenditures"—ask them to specify where they would make \$160 Million of cuts.

(2) If your editorial board wishes to take a negative position, hold it to the same standard of providing alternatives.


Rep. Tom Trail

208-882-6077; Fax 208-882-0896

Rep Allen Andersen

208-233-5438; Fax 208-233-7231

(5)

Idaho Tax Expenditures and Exemptions

Income Tax Expenditures

(\$ thousands)

(Calendar Year Basis)		Total Estimate	Recoverable Estimate	Removed Under Bill
Uses of Income Not Taxed		CY2003		
1.01	Investment Tax Credit	\$29,747	\$29,747	29,747
1.02	Other States Tax Credit	31,594	0	0
1.03	Elderly Dependent Credit	349	349	0
1.04	Youth & Rehab Credit	5,364	5,364	0
1.05	Schools & Libraries Credit	3,448	3,448	0
1.06	Grocery Credit	24,657	0	0
1.07	Recycled Products Credit	25	25	0
1.08	Technological Equipment Deduction	84	84	84
1.09	Long-term Care Insurance	455	455	0
1.10	Alternative Energy Device Deduction	296	296	296
1.11	Insulation Deduction	495	495	495
1.12	Workers' Comp. Premium Deduction	400	400	400
1.13	Child Care Deduction	3,037	3,037	0
1.14	College Saving Deduction	377	377	0
1.15	Health Insurance Deduction	5,900	5,900	0
1.16	Elderly & Dev. Dis. Deduction	9	9	0
1.17	Adoption Expenses Deduction	43	43	0
1.18	Medical Savings Accounts	1,324	1,324	0
1.19	New Employees Credit	115	115	0
1.20	Riparian Land Improvements	250	250	0
1.20a	Broadband Investment Credit	3,500	3,500	3,500
1.20b	County Incentive Investment Tax Credit	0	0	0
1.20c	Research & Development Credit	7,000	7,000	7,000
Total		\$118,469	\$62,218	\$41,522
Sources of Income Not Taxed				
1.21	Capital Gains Exclusion	14,065	14,065	0
1.22	Government Interest Exclusion	5,764	0	0
1.23	Social Security Exclusion	23,783	23,783	0
1.24	Railroad Retirement Exclusion	4,644	4,644	0
1.25	Retirement Benefit Exclusion		0	0
1.26	Idaho Lottery Winnings Exclusion	4,183	4,183	4,183
1.27	Indian Earnings on Reservation Exclusion	387	0	0
1.28	World War II Reparations Exclusion	0	0	0
1.29	Marriage Penalty	11,998	11,998	0
Total		\$64,824	\$58,673	\$4,183
Total Income Tax		\$183,293	\$120,891	\$45,705

Richard A. Slaughter, Ph.D.

ISEEO

Case No. 94008

Exhibit No. 204

Page 2 of 2

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Sales Tax Expenditures

		(\$thousands)		
		Total	Recoverable	
		Estimate	Estimate	Recovery @ 4%
(Fiscal Year Basis)				
Specific Uses Not Taxed		FY2003		
2.01	Production Exemption Equipment	\$58,483	\$0	0
2.02	Production Exemption Supplies	44,272	0	0
2.03	Irrigation Equipment & Supplies	2,616	2,616	0
2.04	Pollution Control Equipment	3,142	3,142	0
2.05	Broadcast Equipment	1,615	1,615	0
2.06	Publication Equipment	104	104	0
2.07	Commercial Aircraft	1,575	1,575	0
2.08	Railroad Rolling Stock & Remanufacturing	2,125	2,125	0
2.09	Interstate Trucks	5,094	0	0
2.10	Out-of-State Contracts	2,691	0	0
2.11	Trade-in Value	21,746	21,746	17,397
2.12	Sales of Businesses or Business Assets	1,277	0	0
2.13	Food Stamps/WIC	3,156	0	0
2.14	Motor Vehicles used Outside of Idaho	12,146	0	0
2.15	Common Carrier Purchases & Out-of-State	NA	0	0
2.16	Donation of Real Property to Idaho Gov't	3	0	0
2.17	Incidental Sales of Tangible Personal Property	10	0	0
2.18	Lodging, Eating, & Drinking Places	47	47	0
2.19	School Lunches & Senior Meals	2,141	2,141	0
2.20	Driver's Education Automobiles	32	32	0
2.21	Ski Lifts and Snowgrooming Equipment	501	501	401
2.21a	Clean Rooms	400	400	0
Total		\$163,176	\$59,188	\$17,798

Sales Tax Exemptions (Fiscal Year Basis)

		FY2003		
Goods Not Taxed				
2.22	Motor Fuels	\$49,344	\$0	0
2.23	Heating Materials	2,658	2,658	2,126
2.24	Utility Sales	48,233	48,233	38,586
2.25	Used Mobile Homes	2,300	2,300	0
2.26	Vending Machines & Amusement Devices	0	0	0
2.27	Prescriptions & Durable Medical Equipment	14,159	14,159	0
2.28	Funeral Caskets	837	837	0
2.29	Containers	22	22	0
2.30	Nonprofit Literature	93	93	0
2.31	Official Documents	46	46	0
2.32	Precious Metal Bullion	465	0	0
2.33	New Manufactured Homes & Modular Buildings	1,600	1,600	0
2.34	Telecommunications Equipment	602	602	482
Total		\$120,359	\$70,550	\$41,194

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Services Not Taxed

2.35 Construction	88,789	88,789	0
2.36 Agricultural & Industrial Services	4,971	4,971	0
2.37 Transportation Services	13,634	13,634	10,907
2.38 Communications	26,068	26,068	0
2.39 Repairs	28,855	28,855	0
2.40 Professional Services	163,153	163,153	130,522
2.41 Business Services	33,885	33,885	27,108
2.42 Personal Services	9,569	9,569	7,655
2.43 Health & Medical Services	170,233	170,233	0
2.44 Social Services	50,370	50,370	0
2.45 Educational Services	13,477	13,477	0
2.46 Lottery & Pari-Mutuel Betting	6,576	6,576	5,261
2.47 Media Measurement Services	45	45	0
2.48 Miscellaneous Services	12,003	12,003	0
Total	\$621,628	\$621,628	\$181,454

Specific Entities Not Taxed

2.49 Educational Institution Purchases	5,318	5,318	0
2.50 Hospital Purchases	12,715	12,715	0
2.51 Health Entity Purchases	230	230	0
2.52 Canal Company Purchases	706	706	0
2.53 Forest Protective Associations Purchases	31	31	0
2.54 Food Bank Purchases	167	167	0
2.55 Nonsale Clothiers	1	1	0
2.56 Centers for Independent Living	3	3	0
2.57 Idaho State & Local Government Purchases	18,795	18,795	0
2.58 Ronald McDonald House Rooms	1	1	0
2.59 INEEL R&D Purchases	3,299	3,299	2,639
2.60 Motor Vehicle Purchases by Related Parties	1,425	1,425	1,140
2.61 Sales by 4H & FFA Clubs	23	23	0
2.62 Sales by Non-Retailers (Yard & Occasional)	1,906	0	0
2.63 Sales by Indian Tribes on Reservations	3,042	3,042	0
2.64 Sales of Meals by Churches to Members	8	0	0
2.65 Sales by Outfitters & Guides	13	13	10
2.66 Sales through Vending Machines	1,515	1,515	1,212
2.67 Auto Manufacturers' Rebates	470	470	0
2.68 Incidental Sales of Churches	477	477	0
2.69 Federal Excise Tax Imposed at Retail	NA	0	0
2.70 Constitutionally Prohibited	NA	0	0
2.71 Statutorily Prohibited	NA	0	0
Total	\$50,145	\$48,231	\$5,002

Total Sales Tax

\$955,308	\$799,597	\$245,447
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Grand Total (Income and Sales)

\$1,138,601	\$920,488	\$291,152
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Source for Total Estimate Column from

Division of Financial Management: General Fund Revenue Book, FY 2003

Richard A. Slaughter, Ph.D.

ISEEO

Case No. 94008

Exhibit No. 204

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COMMITTEES

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COMMERCE & HUMAN RESOU

House of Representatives State of Idaho

December 18, 2002

Roger Madsen
David Johnson
Department of Labor
317 W. Main
Boise, Idaho 83720

Re: Final Version of Idaho Economic Recovery and Tax Reform Act of 2003

Dear Mr. Madsen and Mr. Johnson:

Delivered herewith are two sets of the following:

- (1) The final version of the Bill with Statement of Purpose on top;
- (2) A copy of our explanatory letter to the Legislators; and
- (3) The list of exemptions in the sales tax and income tax laws, column one being all of the exemptions, and column two being all of the exemptions which could reasonably be considered for repeal and column three being those which are repealed by our Bill.

We understand you are going to mail this package out to all members of the Governor's Blue Ribbon Committee.

Very truly yours,

Tom Trail

A handwritten signature in cursive script that reads "Tom Trail".

Enclosures

STATEMENT OF PURPOSE

RS _____

This bill enacts the "Idaho Economic Recovery and Tax Reform Act of 2003" which reduces the sales tax rate from five percent (5%) to four percent (4%), reduces the use tax rate from five percent (5%) to four percent (4%) and repeals certain exemptions in both the Sales Tax and the Income Tax with the result that there is a net gain in tax income to the State of Idaho of approximately \$131.2 Million as demonstrated in the following table:

Current Sales Tax Collections:	\$800,000,000
Loss by Reducing to 4%:	- 160,000,000
Gain from Removing Certain Sales Tax Exemptions:	245,447,200
Gain from Removing Certain Income Tax Exemptions:	<u>45,705,000</u>
Net Gain to State Cooffers:	\$131,152,200

Additionally, the bill provides for quarterly payment of income tax estimates by persons required to make estimated payments to the Internal Revenue Service.

FISCAL NOTE

The bill will result in an increase in revenue to the State of Idaho of approximately \$131.2 Million commencing September 1st, 2003. Additionally the payment of quarterly estimates will increase the revenues (on a one-time basis) in the approximate sum of \$80 Million, which will be received on June 15th, 2003 (which may reduce or eliminate the need for any further holdback in FY 2003).

The implementation will be accomplished with in-house staff and in-house printing services, thus requiring an appropriation of less than \$200,000.

Contact Persons: Representative Tom Trail
Representative Allen Andersen
334-2000

LEGISLATURE OF THE STATE OF IDAHO
Fifty-seventh Legislature

First Regular Session - 200-----

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

RELATING TO TAXATION POLICIES AND ECONOMIC RECOVERY; PROVIDING A SHORT TITLE; PROVIDING A STATEMENT OF LEGISLATIVE INTENT; AMENDING SECTION 63-3026A, IDAHO CODE, TO DELETE THE LIMITATION OF INCOME TAX ON CERTAIN LOTTERY WINNINGS; AMENDING SECTION 63-3029J, IDAHO CODE, TO DELETE LANGUAGE THAT THE CREDIT SHALL BE IN ADDITION TO THE INVESTMENT TAX CREDIT AND TO REVISE THE DEFINITION OF QUALIFIED INVESTMENT AND TO PROVIDE THAT RECAPTURE OF THE CREDIT SHALL BE DETERMINED ACCORDING TO THE APPLICABLE RECAPTURE PROVISIONS OF THE INTERNAL REVENUE CODE; AMENDING SECTION 63-3036A, IDAHO CODE, TO EXTEND PAYMENT OF ESTIMATED INCOME TAXES TO INDIVIDUALS AND OTHER NON-CORPORATE TAXPAYERS; AMENDING SECTION 63-3608, IDAHO CODE, TO INCLUDE SERVICES OR BENEFITS OF SERVICE IN THE DEFINITION OF PURCHASE; AMENDING SECTION 63-3609, IDAHO CODE, TO DEFINE A SERVICE PURCHASED FOR RESALE; AMENDING SECTION 63-3610, IDAHO CODE, TO INCLUDE A SELLER OF SERVICES IN THE DEFINITION OF RETAILER; AMENDING SECTION 63-3612, IDAHO CODE, TO PROVIDE THE DELIVERY OF PERFORMANCE OF ANY SERVICE IN THIS STATE FOR A CONSIDERATION IS A SALE AND TO PROVIDE THE SALE OF LOTTERY TICKETS AND PARI-MUTUEL BETTING TICKETS IS A SALE; AMENDING SECTION 63-3613, IDAHO CODE, TO INCLUDE SERVICES IN THE DEFINITION OF SALES PRICE, TO DELETE THE EXCLUSION OF TRADE-IN VALUE INCLUDING REFERENCES TO MANUFACTURED HOMES AND MODULAR BUILDINGS AND TO DELETE DELIVERY CHARGES AND CERTAIN OUTFITTER AND GUIDES FEES FROM THE DEFINITION OF SALES PRICE AND TO DELETE PROVISIONS RELATING TO VENDING MACHINES; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3614A, IDAHO CODE, TO PROVIDE A DEFINITION SERVICES; AMENDING SECTION 63-3615, IDAHO CODE, TO PROVIDE THAT AS APPLIED TO SERVICES, USE MEANS THE PURCHASE OF OR THE RECEIPT OF THE BENEFIT OR ENJOYMENT OF SERVICES IN THIS STATE; AMENDING SECTION 63-3619, IDAHO CODE, TO REDUCE THE SALES TAX RATE FOR FIVE PERCENT TO FOUR PERCENT AND TO ADD REFERENCE TO SALES OF SERVICES; AMENDING SECTION 63-3621, IDAHO CODE, TO REDUCE THE USE TAX RATE FROM FIVE PERCENT TO FOUR PERCENT AND TO ADD REFERENCE TO THE RECEIPT OR USE OF SERVICES AND TO DELETE LANGUAGE REGARDING THE USE TAX EXEMPTION ON CERTAIN WIRELESS TELECOMMUNICATIONS EQUIPMENT; AMENDING SECTION 63-3622D, IDAHO CODE, TO DELETE REFERENCES TO CERTAIN CODE SECTIONS RELATING TO CERTAIN PUBLIC UTILITIES AND CERTAIN HEATING MATERIALS; AMENDING SECTION 63-3622K, IDAHO CODE, TO DELETE THE DEFINITION OF OCCASIONAL SALE; AMENDING SECTION 63-3622JJ, IDAHO CODE, TO DELETE REFERENCE TO TANGIBLE PERSONAL PROPERTY USED TO PRODUCE TANGIBLE PERSONAL PROPERTY USED FOR CERTAIN HEATING MATERIALS EXEMPTED FROM THE SALES TAX; AMENDING SECTION 63-3638, IDAHO CODE, TO REVISE THE PERCENTAGE GOING TO THE REVENUE SHARING

ACCOUNT; REPEALING SECTIONS 63-3622B, 63-3622C, 63-3622F, 63-3622G, 63-3622J, 63-3622Y, 63-3622BB, 63-3622NN AND 67-7439, IDAHO CODE; REPEALING SECTIONS 63-3022B, 63-3022C, 63-3022J 63-3029B, 63-3029G AND 63-3029I; PROVIDING SEVERABILITY; DECLARING AN EMERGENCY AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. This act shall be known as the "Idaho Economic Recovery and Tax Reform Act of 2003."

SECTION 2. The Legislature hereby declares that:

(1) the economic and personal health and welfare of the people of the state of Idaho is dependant upon the provision by the state of funding, and the means of funding, of a sound infrastructure at both the state and local levels; and

(2) there has developed an erosion of the tax base which can best be reversed by (a) a modernization of the states tax to reflect Idaho's shift since 1965 to a service-based economy, and by (b) making the tax structure more economically fair and fiscally sound by broadening it by repealing certain tax exemption;

(3) absent reform of the tax structure, the state of Idaho faces severe budget deficits for the foreseeable future; and

(4) proper and adequate funding of state government serves as a stimulus to the economy through the creation and maintenance of jobs, demand for goods and services, and enhancement of the quality of education and other institutions which foster business and commerce.

SECTION 3. That Section 63-3026A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

- (i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;
 - (ii) The ownership or disposition of any interest in real or tangible personal property located in this state;
 - (iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;
 - (iv) A resident estate or trust;
 - (v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state;
 - (vi) The conduct of pari-mutuel wagering, charitable gaming or any other form of gambling taking place within this state, ~~except as expressly limited in section 67-7439, Idaho Code.~~
- (b) Notwithstanding the provisions of subsection (3)(a) of this section, transactions and investments made, placed or directed by Idaho resident registered broker-dealers and investment advisers or institutions exempt from registration under the Idaho securities act in securities listed with or through the New York Stock Exchange, the American Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director of the department of finance which generate dividends, interest, capital gains or similar profits or returns for nonresidents not otherwise subject to Idaho income taxation shall not result in the intangible property being deemed to have a situs outside the domicile of the owner.
- (c) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or related to sources within this state.
- (d) The income of nonresident or part-year resident individuals, trusts or estates which is derived from or related to sources both within and without this state shall be attributable to this state in the manner prescribed in the rules of the state tax commission.
- (4) In computing the Idaho taxable income of a part-year or nonresident individual, trust or estate, the standard deduction or itemized deductions, as defined in section 63-3022(j), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the Internal Revenue Code or any allowance in lieu of such deduction, shall be allowed in the proportion

that paragraph (a) of this subsection bears to paragraph (b) of this subsection:

(a) The Idaho taxable income of the taxpayer modified as follows:

- (i) No allowance shall be made for either the standard deduction or itemized deductions;
- (ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction.

(b) The Idaho taxable income as would be calculated for a resident of Idaho modified as follows:

- (i) No allowance shall be made for either a standard deduction or itemized deductions;
- (ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction;
- (iii) Compensation for active military service in the armed forces shall not be deducted;
- (iv) Income earned within the original exterior boundaries of any federally created Indian reservation by an enrolled Indian in a federally recognized Indian tribe on a federally recognized Indian reservation shall be added if not otherwise included.

(5) An adjustment may be made to eliminate distortions in the amount of net income attributable to a taxpayer's activities within the state of Idaho. Such deductions shall be limited to circumstances involving itemized deductions as referred to in subsection (4) of this section and which reflect:

- (a) A failure to reflect the net income or deduction after reimbursements have been received; or
- (b) A failure to reflect the net amount of mortgage interest income or expense from activities within Idaho.

(6) For the purposes of subsections (1) and (2) of this section, deductions and adjustments allowed in computing the Idaho taxable income of nonresident and part-year resident individuals, trusts and estates shall be prescribed in the rules of the state tax commission. Such rules shall be based upon:

- (a) Whether or not the deduction or adjustment is related to the production of income reportable to Idaho;
- (b) Whether or not the deduction or adjustment is related to income received, expenses paid, or events of tax consequence which occurred during a portion of a taxable year that the taxpayer was domiciled in or residing in Idaho; or
- (c) Any other appropriate basis for making the adjustment. An "appropriate basis" is one which the state tax commission finds is needed to insure that the amount of Idaho taxable income is fairly and reasonably related to a taxpayer's activities in this state.

SECTION 4. That Section 63-3029J, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029J. INCENTIVE INCOME TAX INVESTMENT CREDIT. (1) Subject to the limitations of this section, for taxable year 2001 only, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sec-

tions 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount allowed by subsection (2) of this section for qualified investments in Idaho. ~~The credit shall be in addition to the credit for capital investment permitted by section 63-3029B, Idaho Code.~~

(2) The credit permitted in subsection (1) of this section shall be at the percentage rate determined under either subsection (2)(a) or (2)(b) of this section at the election of the taxpayer.

(a) (i) One-half (1/2) of the amount by which the average three-year unemployment rate in the county in which the property is located exceeds six percent (6%). In the case of mobile property, the property shall be located in the county in which it is primarily based.

(ii) For purposes of this section the director of the department of labor shall, on or before the first day of September of each calendar year, establish and certify to the state tax commission the average three-year unemployment rate in each county in Idaho for the immediately preceding three (3) calendar years. The rates thus certified shall apply to the calculation of the credit under subsection (2)(a)(i) of this section for property qualifying in the taxable year beginning during the next calendar year.

(b) (i) One-tenth of one percent (.1%) for each full percent that the three-year average per capita personal income level in the county in which the property is located is below ninety percent (90%) of the average statewide per capita personal income level.

(ii) For purposes of this section the director of the department of commerce shall, on or before the first day of September of each calendar year, establish and certify to the state tax commission the most current three-year average per capita personal income level in each county in Idaho and the statewide per capita personal income level for the most current preceding three (3) calendar years. The levels thus certified shall apply to the calculation of the credit under subsection (2)(b)(i) of this section for property qualifying in the taxable year beginning during the next calendar year.

(3) As used in this section the term "qualified investment" ~~shall be defined as in section 63-3029B, Idaho Code~~ means certain depreciable property which:

(a) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal revenue code subject to the limitations provided for certain regulated companies in section 46(f) of the Internal revenue code and is not a motor vehicle under eight thousand (8,000) pounds gross weight;

(b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) Has a situs in Idaho.

(4) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (6) of this section shall not exceed in any one (1) taxable year the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted

by this chapter; or

(b) Five hundred thousand dollars (\$500,000).

(5) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (6) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(6) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (4) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(7) In the event that property upon which the credit allowed by this section has been used ceases to qualify for the credit ~~allowed-by-section 63-3029B7--Idaho-Code~~, the recapture of credit under this section shall be ~~in--the--same--proportion--and--subject--to--the--same--provisions--as--the--amount--of credit--required--to--be--recaptured--under--section--63-3029B7--Idaho-Code~~ determined according to the applicable recapture provisions of the Internal Revenue Code.

(8) (a) Subject to the requirements of this subsection, a taxpayer entitled to the credit or to an unused portion of the credit allowed by this section may transfer the unused credit to another taxpayer required to file a return under this chapter.

(b) Before completing a transfer under this subsection, the transferor shall notify the state tax commission of its intention to transfer the credit and the identity of the transferee. The state tax commission shall provide the transferor with a written statement of the amount of credit available under this section as then appearing in the commission's records and the number of years the credit may be carried over. The transferor shall provide the transferee with the original statement. The transferee shall attach a copy of the statement to any return in regard to which the transferred credit is claimed.

(c) In the event that after the transfer the state tax commission determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit and shown in the statement described in subsection (8)(b) of this section or that the credit is subject to recapture, the commission shall assess the amount of overstated credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under this chapter.

(9) In addition to other needed rules, the state tax commission may promulgate rules prescribing:

(a) In the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

(b) A requirement that a transferor under subsection (8) of this section, prior to obtaining the written statement provided in subsection (8)(b) of this section, post such bond or security as the state tax

commission may require to secure any liability referred to in subsection (8)(c) of this section. Such rules shall provide an opportunity for a taxpayer, upon a showing of financial responsibility, to have the bond waiver, for notice of denial of waiver in accordance with section 63-3045, Idaho Code, and for review in accordance with section 63-3045B, Idaho Code.

SECTION 5. That Section 63-3036A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3036A. PAYMENT OF ESTIMATED TAX. (a) Any ~~corporation~~ person subject to this chapter which is required to make a payment of estimated taxes to the internal revenue service and will have an Idaho income tax liability of five hundred dollars (\$500) or more shall pay to the state tax commission estimated taxes due under this chapter.

(b) The provisions of the Internal Revenue Code relating to determination of reporting periods and the due dates of payments of estimated tax shall apply to the estimated payments due under this section.

(c) The amount of estimated tax due shall be determined as follows:

~~(1) Commencing with the calendar quarter that begins July 1, 1987, in~~
(1) the case of any ~~corporation~~ person which was required to pay tax under this chapter for its immediately preceding taxable year, the amount of each quarterly payment for its current taxable year shall be twenty-five percent (25%) of the lesser of:

(i) The tax amount required to be reported on the return for the immediately preceding taxable year; or

(ii) Ninety percent (90%) of the tax required to be paid with the current year's return.

(2) Any ~~corporation~~ person required to make estimated payments under this section and who makes annualized estimated payments under the Internal Revenue Code shall be permitted to annualize its estimated payments under this section in the manner prescribed by regulation of the state tax commission. Such regulations shall, to the extent practicable, follow the provisions of the Internal Revenue Code and the regulations thereunder relating to annualization of estimated payments.

(d) The amounts paid as estimated taxes pursuant to subsection (c) of this section shall be considered to be in part payment of the tax imposed by this chapter on the person reporting such estimated tax. The part payment shall apply to such tax for the tax year during which the reporting period for which the estimate is made occurs. In the event that such part payments, together with all other part payments, estimated payments, withheld taxes or other credits allowable against the taxes imposed by this chapter shall exceed the amount of tax due, the state tax commission shall refund such excess within the time and in the manner prescribed in section 63-3072(c), Idaho Code, relating to refund of taxes withheld by employers.

(e) The provisions of this section shall in no way relieve any person from any obligation to file a return under any provision of this chapter at the time such return may be due. In the event that the estimated payments required under this section, together with any other part payments, estimated payments, withheld taxes or other credits applicable to the same tax-

able year are less than the amount of taxes imposed by this chapter, the unpaid tax shall be paid at the time prescribed in section 63-3034, Idaho Code.

(f) ~~The payment due for the first full reporting period occurring after the effective date of this act, and the payment due for each of the next three (3) succeeding reporting periods shall be one-half (1/2) of the amount otherwise due under this section~~ In the case of persons other than corporations, the estimated payment for the first and second quarters of the taxable year beginning during 2003 shall be due no later than June 15, 2005.

SECTION 6. That Section 63-3608, Idaho Code, be, and the same is hereby amended to read as follows:

63-3608. PURCHASE. The term "purchase" means

(1) Any transfer, rental, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. A transaction whereby the possession of property is transferred but the seller retailer retains the title as security for the payment of the price is a purchase. A transfer for a consideration of any publication or of tangible personal property which has been produced, fabricated, or printed to the special order of the customer is also a purchase.

(2) Any transaction whereby a service or benefits of a service are obtained for a consideration.

SECTION 7. That Section 63-3609, Idaho Code, be, and the same is hereby amended to read as follows:

63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

(c) A service is purchased for resale only when:

(1) The service is to repair, maintain or otherwise care for tangible personal property held solely for resale in the regular course of a business operated by the purchaser, or;

(2) The service is purchased for the benefit of one (1) or more specific clients or customers or the purchaser of the service, identifiable at the time of the purchase of the service, to whom the purchase price of the service will be passed.

SECTION 8. That Section 63-3610, Idaho Code, be, and the same is hereby amended to read as follows:

63-3610. RETAILER. The term "retailer" includes:

(a) Every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales at auction of tangible personal property or services owned by the person or others.

(b) Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

(c) Every person making more than two (2) retail sales of tangible personal property or services during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, or every person making fewer sales who holds himself out as engaging in the business of selling such tangible personal property at retail or who sells a motor vehicle.

(d) When the state tax commission determines that it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the state tax commission may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this act.

(e) Persons conducting both contracting and retailing activities. Such persons must keep separate accounts for the retail portion of their business and pay tax in the usual fashion on this portion.

SECTION 9. That Section 63-3612, Idaho Code, be, and the same is hereby amended to read as follows:

63-3612. SALE. (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and the delivery or performance of any service in this state for a consideration. "Sale" shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

(b) Furnishing, preparing, or serving food, meals, or drinks and nondepreciable goods and services directly consumed by customers included in the charge thereof.

(c) A transfer of possession of property where the seller retains the

title as security for the payment of the sales price.

(d) A transfer of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Admission to a place or for an event in Idaho, provided that an organization conducting an exempt function as defined in section 527 or exempted by section 501(c)(3) of the Internal Revenue Code, as incorporated in section 63-3004, Idaho Code, and collecting any charges for attendance at the aforementioned event, shall not have those admission charges be defined as a sale if the event:

- (i) Is not predominately recreational or commercial; and
- (ii) Any included entertainment value is minimal when compared to the charge for attendance; and
- (iii) Such entity has paid sales and use tax on taxable property or services used during the event.

(f) The use of or the privilege of using tangible personal property or facilities for recreation.

(g) Providing hotel, motel, campground, or trailer court accommodations, nondepreciable goods directly consumed by customers and included services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

(h) The lease or rental of tangible personal property.

(i) The intrastate transportation for hire by air of freight or passengers, except (1) as part of a regularly scheduled flight by a certified air carrier, under authority of the United States, or (2) when providing air ambulance services.

(j) The sale of lottery tickets and pari-mutuel betting tickets.

(3) As used in subsections (2)(b) and (2)(g) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar nondisposable property.

SECTION 10. That Section 63-3613, Idaho Code, be, and the same is hereby amended to read as follows:

63-3613. SALES PRICE. (a) The term "sales price" means the total amount for which tangible personal property, including or services agreed to--be-rendered-as-a-part-of-the-sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property or services sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

2. The cost of materials used, labor or service cost, losses, or any other expense.

3. The cost of transportation of the property prior to its sale.

4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

(b) The term "sales price" does not include any of the following:

1. Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.

2. ~~Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a new-manufactured home or a modular building as defined herein.~~

3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

43. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.

54. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

65. The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

7. ~~Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property, except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.~~

86. Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer.

9. ~~The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code, by a governmental entity pursuant to statute~~

~~for the purpose of conducting outfitting activities on land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated separately and is presented as a use fee paid by the outfitted public to be passed through to the governmental entity.~~

~~10.7.~~ The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service, or the amount of any commission or other indirect compensation received by a retailer or seller as a result of the consumer commencing or continuing telecommunications service.

(c) The sales price of a "new manufactured home" or a "modular building" as defined in this act shall be limited to and include only fifty-five percent (55%) of the sales price as otherwise defined herein.

(d) Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.

~~(e) Tangible personal property when sold at retail for more than eleven cents (\$.11) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen percent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines.~~

SECTION 11. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3614A, Idaho Code, and to read as follows:

63-3614A. SERVICES. (a) The term "services" includes transportation services, professional services, business services, and personal services. "Services" does not include medical services.

(1) As used in this section the term "SIC Code" means the Standard Industrial Classification Code established by the Office of Management and Budget in the Standard Industrial Classification Manual of 1987.

(2) Transportation services means those services included in SIC Code major group 47.

(3) Professional services means those services included in SIC Code major groups 81 and 87.

(4) Business services means those services included in SIC Code major group 73.

(5) Medical services means those services included in SIC Code major group 80.

(b) A service is in this state when the benefit or enjoyment of the services is in this state. Services in this state include:

(1) Services relating to real property located in this state.

(2) Services relating to tangible personal property when:

(i) the tangible personal property is delivered in this state; or,

(ii) the tangible personal property is located in this state at the time the service is performed.

(3) Services not relating to real property or tangible personal property which are performed for an individual in this state or for a business, or an identifiable segment of a business, operating solely in this state.

(4) In the case of a service used both within and outside this state the portion of services used outside of this state shall not be subject to tax under this chapter. To the extent that a purchaser's use of a service cannot be assigned to a use by an individual in this state or to a business or an identifiable segment of a business operating in this state, then the purchaser shall allocate or apportion the service based on rules promulgated by the state tax commission. In the absence of rules, the purchaser may use any reasonable method of allocation or apportionment that can be substantiated by the purchaser's books and records and other facts and circumstances.

SECTION 12. That Section 63-3615, Idaho Code, be, and the same is hereby amended to read as follows:

63-3615. STORAGE -- USE. (a) The term "storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section 63-3622D, Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business.

(c) As applied to services, "use" means the purchase of or the receipt of the benefit or enjoyment of services in this state.

(d) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state.

SECTION 13. That Section 63-3619, Idaho Code, be, and the same is hereby amended to read as follows:

63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby

imposed upon each sale at retail at the rate of five four per cent (54%) of the sales price of all retail sales and services subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

(a) The tax shall apply to, be computed on, and collected for all credit, instalment, conditional or similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged.

(b) The tax hereby imposed shall be collected by the retailer from the consumer.

(c) The state tax commission shall provide schedules for collection of the tax on sales which involve a fraction of a dollar. The retailer shall calculate the tax upon the entire amount of the purchases of the consumer made at a particular time and not separately upon each item purchased. The retailer may retain any amount collected under the bracket system prescribed which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting the tax.

(d) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

(e) The tax commission may by rule provide that the amount collected by the retailer from the customer in reimbursement of the tax be displayed separately from the list price, the price advertised on the premises, the marked price, or other price on the sales slip or other proof of sale.

(f) The taxes imposed by this chapter shall apply to the sales to contractors purchasing for use in the performance of contracts with the United States.

SECTION 14. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 1965, for storage, use, or other consumption in this state, and the receipt or use of services in this state at the rate of five four percent (54%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. ~~A retailer shall not be considered to have stored, used or~~

~~consumed-wireless-telecommunications-equipment-by-virtue-of-giving,-selling
or--otherwise-transferring-such-equipment-at-a-discount-as-an-inducement-to
a-consumer-to-commence-or-continue-a-contract-for--telecommunications--ser-
vice-~~

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the person selling the property from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any

report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

(g) Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dollars (\$100), and each violation shall constitute a separate offense.

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(i) It shall be presumed that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the property was not purchased for storage, use, or other consumption in this state.

(j) When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state.

(l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned motor vehicles by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial.

For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-36220, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

SECTION 15. That Section 63-3622D, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622D. PRODUCTION EXEMPTION. There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

- (1) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale.
- (2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.
- (3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the product or for removing impurities from the product or otherwise placing the product in a more marketable condition as part of an operation described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.
- (4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.
- (5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (2), (3) and (4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to

any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section 63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at retail within or without this state, without regard to the ownership of the product being produced.

(d) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(e) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(f) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars (\$100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) Property used in research or development.

(4) Property used in transportation activities.

(5) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(6) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(7) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(8) Motor vehicles and aircraft.

(9) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections ~~63-3622F, 63-3622G and~~ 63-3622I, Idaho Code.

(10) Tangible personal property described in section 63-3622HH, Idaho Code.

(g) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund.

SECTION 16. That Section 63-3622K, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622K. OCCASIONAL SALES. (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term "occasional sale" means:

(1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a "retailer" under section 63-3610(c), Idaho Code.

(2) Any transfer of all or substantially all of the property held or used by a person in a business requiring a seller's permit when, after such transfer, the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purpose of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having a "real or ultimate ownership" of the property of such corporation or other entity.

(3) A transfer of capital assets to or by a business when the transfer is accomplished through an adjustment of the beneficial interest of the business and the transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, on the capital assets, incidental to:

(i) A division of joint venture, partnership, or limited liability company assets among the members or partners in exchange for a proportional reduction of the transferee's interest in the joint venture, partnership, or limited liability company. For the purposes of this section, the term "limited liability company" means a business organization as defined in chapter 6, title 53, Idaho Code;

(ii) The formation of a partnership, joint venture, or limited liability company by the transfer of assets to the partnership, joint venture, or limited liability company or transfers to a partnership, joint venture, or limited liability company in exchange for proportionate interests in the partnership, joint venture, or limited liability company;

- (iii) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for stock in proportion to assets contributed;
 - (iv) The transfer of assets of shareholders in the formation or dissolution of a corporation;
 - (v) The transfer of capital assets by a corporation to its stockholders in exchange for surrender of capital stock;
 - (vi) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
 - (vii) The transfer of assets from a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation to a parent corporation or another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.
- (4) The sale, lease or rental of a capital asset in substantially the same form as acquired by the transferor and on which the initial transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.
- (5) The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expense attributable to such "separate division, branch, or identifiable segment" could be separately ascertained from the books of accounts and records.
- (6) Sales by persons who are not defined as "retailers" in section 63-3610, Idaho Code.
- (7) Sales of animals by any 4-H club or FFA club held in conjunction with a fair or the western Idaho spring lamb sale.
- (8) The sale or purchase of tangible personal property at home yard sales; provided however, that no more than two (2) such home yard sales per individual calendar year shall be exempt.
- (c) ~~As used in this section, the term "occasional sale," when applied to the sale of a motor vehicle, means only:~~
- ~~(1) Sales of motor vehicles between members of a family related within the second degree of consanguinity, unless a sales or use tax was not imposed on the sale of that motor vehicle at the time of purchase, in which situation the sale is taxable.~~
 - ~~(2) Sales of motor vehicles that fall within the scope of the transactions detailed in subsection (b)(2) through (b)(5) of this section.~~
- ~~(d) The exemption provided by subsection (b)(1), (b)(4), (b)(6) or (b)(8) of this section shall not apply to the sale, purchase or use of aircraft, as defined in section 21-201, Idaho Code, nor shall it apply to the~~

sale, purchase or use of boats or vessels, as defined in section 67-7003, Idaho Code, nor shall it apply to the sale, purchase or use of snowmobiles, recreational vehicles or off-highway motorbikes, as defined in section 63-3622HH, Idaho Code.

SECTION 17. That Section 63-3622JJ, Idaho Code, be, and the same is hereby amended to read as follows:

~~63-3622JJ.~~ LOGGING EXEMPTION. There are exempted from the taxes imposed by this chapter:

(1) The sale at retail, storage, use or other consumption in this state of tangible personal property which is primarily and directly used or consumed in logging including, but not limited to, log loaders, log jammers, log skidders and fuel used in logging trucks, provided that the use or consumption of such tangible personal property is necessary or essential to logging.

(2) The exemption allowed by subsection (1) of this section does not include machinery, equipment, materials and supplies used in a manner that is incidental to logging such as maintenance and janitorial equipment and supplies, and hand tools with a unit purchase price not in excess of one hundred dollars (\$100); nor does it include tangible personal property used in any activities other than the actual logging, such as office equipment and supplies, equipment and supplies used in selling or distributing activities, in research, or, except for fuel used in logging trucks, in transportation activities; nor shall this exemption include motor vehicles or aircraft, without regard to the use to which such motor vehicles or aircraft are put; nor shall this exemption apply to vehicles or equipment described in section 63-3622HH, Idaho Code;~~---nor---shall---this---exemption---include---tangible---personal---property---used---to---produce---tangible---personal---property---exempted---from---the---tax---under---this---chapter---by---section---63-362267---Idaho Code.~~

SECTION 18. That Section 63-3638, Idaho Code, be, and the same is hereby amended to read as follows:

63-3638. SALES TAX -- DISTRIBUTION. All moneys collected under this chapter, except as may otherwise be required in section 63-3203, Idaho Code, shall be distributed by the tax commission as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(2) Five million dollars (\$5,000,000) per year is continuously appropriated and shall be distributed to the permanent building fund, provided by section 57-1108, Idaho Code.

(3) Four million eight hundred thousand dollars (\$4,800,000) per year is continuously appropriated and shall be distributed to the water pollution control account established by section 39-3605, Idaho Code.

(4) An amount equal to the sum required to be certified by the chairman of the Idaho housing and finance association to the state tax commis-

sion pursuant to section 67-6211, Idaho Code, in each year is continuously appropriated and shall be paid to any capital reserve fund, established by the Idaho housing and finance association pursuant to section 67-6211, Idaho Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of the Idaho housing and finance association shall be repaid for distribution under the provisions of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the association determines will keep it self-supporting.

(5) An amount equal to the sum required by the provisions of section 63-709, Idaho Code, is continuously appropriated and shall be paid as provided by section 63-709, Idaho Code.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

(8) One dollar (\$1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle processed by the county assessor or the Idaho transportation department excepting those applications in which any sales or use taxes due have been previously collected by a retailer, shall be a fee for the services of the assessor of the county or the Idaho transportation department in collecting such taxes, and shall be paid into the current expense fund of the county or state highway account established in section 40-702, Idaho Code.

(9) ~~Thirteen--and--three-quarters~~ Twelve and forty-two hundredths percent (~~13.75~~ 12.42%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the population of that city bears to the population of all cities within the state; and

(ii) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the preceding year's market value for assessment purposes for that city bears to the preceding year's market value for assessment purposes for all cities within the state.

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

(i) One million three hundred twenty thousand dollars (\$1,320,000) annually shall be distributed one forty-fourth ($1/44$) to each of the various counties; and

(ii) The balance of such amount shall be paid to the various counties, and each county shall be entitled to an amount in the proportion that the population of that county bears to the popula-

tion of the state;

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (8)((9))(d) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (9)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each

county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (9)(d).

(vii) For purposes of this subsection (9)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(10) Any moneys remaining over and above those necessary to meet and reserve for payments under other subsections of this section shall be distributed to the general fund.

SECTION 19. That Sections 63-3622B, 63-3622C, 63-3622F, 63-3622G, 63-3622J, 63-3622Y, 63-3622BB, 63-3622NN, and 67-7439 Idaho Code, be, and the same are hereby repealed.

SECTION 20. That Sections 63-3022B, 63-3022C, 63-3022J 63-3029B, 63-3029G, and 63-3029I, Idaho Code, be and the same are hereby repealed.

SECTION 21. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 22. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2, 3, 4, 5 and 20 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2003. The remaining portions of this act shall be in full force and effect on and after September 1, 2003.



Legislative Services Office Idaho State Legislature

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October 8, 2002

REP. TOM TRAIL
1375 MOUNTAIN VIEW ROAD
MOSCOW, ID 83843

Re: State taxation of services

Dear Rep. Trail:

In response to your request for information on states that tax services, I located a handy state-by-state chart on this subject from the Commerce Clearinghouse State Tax Guide, which is a reliable resource.

I hope the enclosed information is helpful. If you have any questions or need anything further, please feel free to call me at (208) 334-4822, or email me at kford@lso.state.id.us. I will be out of the office from October 9 - 24th, so you can also speak with Kathryn Ineck during that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristin M. Ford".

Kristin M. Ford
Legislative Librarian

Enclosure

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Services

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State	General Treatment	Cleaning Services	Transportation Services	Repair Services	Professional/Personal Services
Georgia	NT	E	T	E	E ¹
Hawaii	GT	T	E	T	T
Idaho	NT	E	T	E	E
Illinois	NT ³	E	E	E	E
Indiana	NT	E	E	E	E
Iowa	MT	T	E	T	T ⁴
Kansas	MT	T	T	T	E
Kentucky	NT	E	E	E	E
Louisiana	NT	T	E	T	E
Maine	MT	E	E	E	E
Maryland	NT	T	E	E	E
Massachusetts	NT	E	E	E	E
Michigan	NT	T	E	E	E
Minnesota	NT	T	E	E	E
Mississippi	MT	T	E	T	E
Missouri	NT	E	T	E	E
Nebraska	NT	E	E	E	E
Nevada	NT	E	E	E	E
New Jersey	NT	E	E	T	E ⁵
New Mexico	GT	T	T	T	T
New York	MT	T	E	T	E ⁵
North Carolina	NT	T	E	E	E
North Dakota	NT	E	E	E	E
Ohio	MT	T	E	T	E
Oklahoma	MT	E	T	E	E
Pennsylvania	MT	T	E	T	E
Rhode Island	NT	E	E	E	E
South Carolina	NT	T	E	E	E
South Dakota	GT	T	T	T	T ⁴
Tennessee	NT	T	E	T	E
Texas	MT	T	T	T	E
Utah	MT	T	T	T	E

¹ In Illinois, a special service occupation tax is imposed on the price of property transferred incident to a service, but it is not imposed on the service itself.

⁴ Professional services relating to health are not taxable.

⁵ Laundry and dry cleaning services exempt.

¶ 60-130 Services

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Services

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State	General Treatment	Cleaning Services	Transportation Services	Repair Services	Professional/ Personal Services
Vermont	NT	E	E	E ⁶	E
Virginia	NT	E	E	E	E
Washington	MT	T	T	T	E
West Virginia	GT	T	E	T	E
Wisconsin	MT	T	E	T	E
Wyoming	NT	T	T ⁶	T	E

[The next page is 8327-3.]

⁶ Price paid to carriers for intrastate transportation of passengers is subject to sales tax; interstate transportation is exempt.

State Tax Guide

Services ¶ 60-130